

Platte Basin Habitat Enhancement Project

Meeting Minutes

North Platte, NE – Twin Platte NRD Office

April 21, 2009

Call to Order and Attendance – Interim Chair Ron Bishop called the meeting to order at 10:30 a.m. CDST. Those in attendance were: Jennifer Schellpeper and Jesse Bradley (Nebraska Department of Natural Resources), Ron Bishop, Mark Czaplewski and Matt Bohnenkamp (Central Platte NRD), Kent Miller, Glen Bowers, and Ann Dimmitt (Twin Platte NRD), Rod Horn (South Platte NRD), John Thorburn (Tri-Basin NRD), Ron Cacek and Tina Kurtz (North Platte NRD), James Huntwork (NRCS), John Heaston (The Nature Conservancy) and Mark Brohman and Lisa Beethe (Nebraska Environmental Trust). Ron Bishop welcomed the Nebraska Environmental Trust (NET) representatives.

Agenda Modifications - No changes were made to the agenda distributed prior to the meeting.

Approval of Minutes – Motion by Kent Miller, second by Rod Horn to approve the minutes of the March 6, 2009, PBHEP meeting as distributed prior to the meeting. Motion passed.

NET Contract Review – Mark Brohman and Lisa Beethe lead a detailed discussion of NET contract issues. A NET handout was distributed to aid in resolving various points needing clarification. Brohman and Beethe noted that the nature of the PBHEP involved several fairly precedent setting matters.

The NET contract requires appraisals “or other agreed upon documentation” of the value of the perpetual easement interest acquired on a tract of land. The NET application proposed an alternative approach of acquiring two appraisals per county in an effort to save time and money. One such appraisal could take place with the first easement acquisition in each county and the second could be acquired in the second or third year of the NET grant. John Heaston noted that each such appraisal could easily cost \$5000 and take three to six months to complete. James Huntwork noted another possible valuation option utilized by the NRCS in similar conservation easements like those done for WRP. The NRCS has used a market analysis developed in concert with the University of Nebraska-Lincoln, Department of Ag Economics. Huntwork will contact folks within NRCS and UNL to acquire additional background information on their valuation documentation process. The PBHEP may be able to use such a process if deemed appropriate by the NET Board. John Heaston suggested the option of hiring appraisers on retainer and having them provide “spot check” appraisals across the Project area over the term of the NET grant. NET representatives noted a possible approach documenting foregone income and trying to calculate recreational values. The consensus of the group was to continue to evaluate options that would minimize costs and yet provide appropriate documentation of easement value. Language currently in the NET contract is believed to be flexible enough to cover various options, allowing us to move forward. The contract language could be amended if necessary later.

The matter of criteria for site selection for conservation easements was discussed. Central Platte NRD essentially uses a first come-first served approach, but noted the wisdom in affecting the

fewest acres and thus impact on tax valuations by acquiring easements on tracts which have the largest depletion percentages. This approach was being contemplated by all the NRD's. All easements will be from willing participants.

The language to be contained in the easement documents were discussed in detail. The PBHEP plan is to develop a template for ground water and a template for surface water easements which could be tailored to each individual NRD. The documents are undergoing review based on the instrument Central Platte NRD currently uses. The NET representatives noted the need for inclusion of Trust reservation of deed language as well as the possible need for language protecting wildlife habitat. Beethe will provide Czaplewski with easement text they would like to see on preserving habitat and future development restrictions (e.g., restrictions on future well development). Ron Bishop noted the possible need for different easement documents for dealing with conversions to dryland cropland and for conversions to grassland. A separate document would be needed for making lands available for public hunting. Heaston noted the possible need to include language in the easement that would require the landowner to acquire the prior approval of any land use changes on the tract before making any such change. He also recommended the language be added to the easement specifying the landowner has a legal obligation to inform the NRD of any sale of the property within thirty days of such sale.

Regarding the need for evidence of water right retirement and water savings, the NET will be able to use such documentation as a copy of the NDNR water right relinquishment form for surface water retirements and the water rights worksheet and associated spreadsheets currently being used by Central Platte NRD for ground water use retirements and associated water savings. Matt Bohnenkamp will work with Czaplewski to distribute an example of the Central Platte NRD water rights worksheet. The merits of training on the means of documenting such retirements and other related tracking and accounting processes was discussed and is to be further addressed later on the meeting agenda. The PBHEP Water Tracking and Accounting Committee needs to be involved in this matter.

Documentation the NET will need prior to closing on a conservation easement includes the following: 1) title insurance (not simply a title search); 2) a draft copy of the conservation easement; 3) a copy of the purchase agreement (Ron Bishop will work with Czaplewski to distribute an example of the purchase agreement currently used by Central Platte NRD); and 4) NET "Memorandum of Contract". Beethe will provide Czaplewski with a Memorandum of Contract used by the NET for distribution. Language related to the Memorandum of Contract needs to be incorporated in the easement document. After closing, the NET will require the following documentation prior to their payment of funds to the PBHEP: 1) copy of the final conservation easement; 2) Memorandum of Contract (to be recorded with the easement on the title for the tract); 3) copy of the closing statement; and 4) copy of the final title policy. Heaston will work with Czaplewski to develop a checklist for this overall process.

The matter of establishment and maintenance of a defense fund was discussed. NET requires proof of the fund which would be used for legal defense of easement documents as well as compliance monitoring and enforcement. Brohman noted the NET defense fund is to establish a separately accounted for account amounting to 10% of the value paid for each individual easement. Tina Kurtz asked about the need for the defense fund, given the NRD's charge with to

accomplish such monitoring as a matter of normal business. Brohman and Beethe explained the NET need for the defense fund but explained that modifications to their policy in this regard were possible if approved by the NET Board. A proposal was made to provide a defense fund that set 5% of the value aside for legal defense of the easement and another 5% set aside for compliance monitoring. The proposal would have each NRD fund, maintain and account for its own defense fund in which the 5% set aside for compliance monitoring (which Brohman noted would include NET grant funding), and another 5% set aside for legal defense. Brohman and Beethe thought this proposal had merit given the fact that the parties involved are government entities, but was not in keeping with NET policy and would need NET Board approval before it could be adopted. The group needs to provide the NET with a list and rationale for any policy changes they seek from the NET Board. The next meeting of the NET Board is set for late July, 2009.

The NET representatives walked through the documentation they would need in advance of their disbursement of funds. The documentation needed included annual bank accounting summaries from each NRD. That summary would need to document defense funds. Each NRD would need to track and document funds set aside as well as costs incurred for monitoring including staff time, mileage and other expenses. It was suggested a sinking fund might be the most appropriate means of funding such matters. John Thorburn expressed concern with the possibility of long term and burdensome accounting and reporting.

In answer to a question, Beethe noted that NET signage would not be required for tracts where NET funds were used for easements. However, she emphasized the importance of noting NET funding support in appropriate forums.

Again, Brohman and Beethe recommended executing the NET Contract now and, if needed later, amending the Contract with Central Platte NRD.

Update on U.S. Bureau of Reclamation Grant – Jennifer Schellpeper provided an update on the NDNR’s application to the USBOR’s Challenge Grant Program. USBOR have recently asked for clarifications of application language and noted that award announcements should be known in late April or May. If the application is successful, there will be a need for coordination of that effort with the PBHEP effort on such items as water tracking and accounting to prevent duplication of duties.

Federal Program Updates – James Huntwork updated the group on details of the federal EQIP, CREP and AWEP programs. Huntwork provided details on the payment schedules for EQIP and general details of AWEP. He noted the payment schedules were developed by researchers from the University of Nebraska. Specifics of the competitive ranking system are yet to be developed. Current NRCS plans are for an AWEP fund obligation deadline of July 15, which hopefully will be extended until later in the fiscal year.

On a related note, Schellpeper noted recent discussions between the U.S. Fish and Wildlife Service, NRCS, NDNR and other state agencies regarding the Service’s concerns of their perception that NRDs and landowners along the Platte River could potentially “double dip” into offset accounts and credits. The Service’s concerns apparently relate to the fact that NRCS

programs are required to undergo ESA Section 7 consultations and while some federal programs receive credit for “saved water,” they don’t want other entities to take the same credit. There is a need to better understand their means of calculating credits. That group plans to meet again in May and Schellpeper will keep us posted on scheduling details. John Thorburn will try to attend the May meeting on behalf of the NRD’s involved in PBHEP. Huntwork noted that PBHEP benefits should not have been included in any Service biological assessments and opinions given it didn’t exist at the time the Service conducted their reviews.

Interlocal Cooperation Agreement – The April 10, 2009 draft PBHEP Interlocal Cooperation Agreement was reviewed in detail. Section 5 will be redrafted by Central Platte NRD. A revised draft will be distributed in advance of the next meeting. Plans need to move forward to get Board or other approvals to execute the Agreement and formally name administrators and alternates.

Financial Matters – In light of the NET award one-half the value requested, Ron Bishop discussed plans for the NRD’s to double their contributions for water acquisitions. The NRD representatives agreed to pursue doubling their contributions working through their individual budgets and noted a need to maintain the existing taxing authority for the funding of the Project. The fact that PBHEP funding is related to an Interlocal Cooperation Agreement will help in that funding for this program would be exempt from the lid on budget increases.

Schellpeper noted that she anticipated that the NDNR funding distribution process for PBHEP would be similar to that required by the NET, both in terms of documentation and general timing.

Committee Structure – A sign-up list was routed at the meeting for sponsors and partners to name members to each of the four PBHEP committees: Steering and Financial Committee, Education and Outreach Committee, Habitat Management and Monitoring Committee, and Water Tracking and Accounting Committee. Any additional sign-ups should be provided to Czaplewski. It is anticipated that committee work could start in advance of the execution of the PBHEP Interlocal Cooperation Agreement. Czaplewski will e-mail committee membership lists to Project sponsors and partners and add their names to PBHEP distribution lists.

General PBHEP Workshop – Central Platte NRD offered to conduct two workshops for general training on legal, procedural, and technical aspects of their approach to dealing with water banking and accounting matters. The first workshop will take place on June 12th in North Platte starting at 10:30 a.m. CDST and will deal with more general matters. The second workshop would focus on detailed technical and computer software matters for any interested parties and will take place on a date to be selected later.

Other – Czaplewski will compile comments provided on the template ground water and surface water conservation easements and provide revised drafts to the group in advance of the next meeting.

Next Meetings and Adjourn – The next three Project meetings will be held on May 13 (1:00 p.m. start), June 26 (10:30 a.m. start) and July 6 (10:30 a.m. start – all start times CDST), 2009,

in North Platte at the offices of Twin Platte NRD. It was suggested that subsequent meetings be consistently arranged on a set quarterly date and time.

The meeting was adjourned at 5:28 p.m.

Respectfully Submitted,
Mark Czaplewski